

No Federal Registration

Midway does not have a federally registered trademark and only asserts that it has acquired its alleged trademark rights under common law. (See Answer to Interrogatory No. 15 by Midway, ITC Inv. No. 337-TA-105, dated 26 August 1981, attached hereto). There is thus no presumption that would follow from such a registration and Midway must prove its rights as well as infringement under "common law."

Prior Use of PUCKMAN Games in USA by Another

The ITC record shows that as of October 18, 1980, "PUCKMAN" game machines not of Midway manufacture were being bought and imported into Hawaii by KK Industrial Services Co. (ITC Complainant's Exhibit 38, pp. 1, 2, 3. Complainant's Exhibit 36, pp. 1, 34-37, copies attached hereto) before Midway first introduced its PAC-MAN machines in the U.S.A. on October 31, 1980. (Midway's Appendix I, p. 7, ¶19.) This establishes that Midway was not the first user in the USA for video games.

Midway has not met its burden of proving that it has any trademark rights that could be infringed by Artic.

Multitude of Sources of Goods

Further, there are a number of manufacturers of PUCKMAN

... when members of the consuming public use a game name to denote the game itself, and not its producer, the trademark is generic and, therefore, invalid.

Anti-Monopoly, Inc. v. General
Fun Group, Inc. 204 USPQ 978 at
985 (9th Cir. 1979) [emphasis added]

See also Selclow & Richter Co. v. Western Printing,
47 F.Supp. 322 at 326, 56 USPQ 61, 64-65 (E.D.Wisc. 1942),
aff'd 142 F.2d 707 (7th Cir. 1943), cert. denied 323 U.S. 735 (1944)

That quote from Anti-Monopoly holds in spades when the
alleged trademark owner itself uses the name PAC-MAN as the
name of the game (see Midway's Appendix II, "A", p. 8 to end,
"D", the Complaint in this case, etc., all identifying the
game itself as PAC-MAN).

Title of Game

Further, Midway is not entitled to trademark protection
on the grounds that it is the title of a particular alleged
copyrighted work and not registrable therefore.

The copyright registration sought and obtained by Midway
Mfg. Co. clearly identifies the title of the "work" as "PAC-MAN."

Midway does not market any other goods under the title
PAC-MAN except game machines. It uses the mark thusly on
the goods:



Nor does it use the mark with any generic term.

It is well established trademark law that the "title" of a copyrighted work cannot be a trademark. See, for example, the discussion at §123 of Vandenburg, Trademark Law and Procedure (2nd ed. 1968) pp. 28-29.

In general, then, it appears well established law that "titles" of single allegedly copyrighted works are not functioning as trademarks, but as the name or title of the particular goods. Thus, here, where Midway itself states that this is,

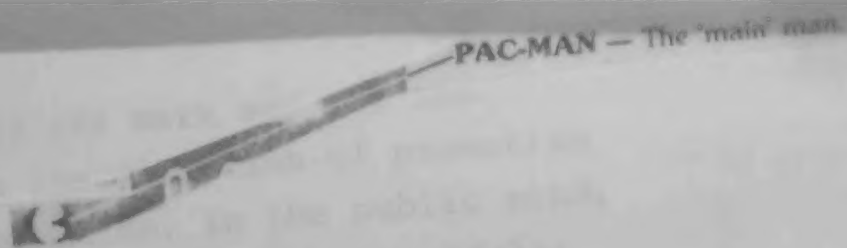


then "Midway's" may be a trademark, but PAC-MAN is the title of the specific goods or the generic name of the game.

PAC-MAN is the name of the Yellow Guy

Further, the word "PAC-MAN" is the name of the yellow round character which travels about eating the dots:

The player, using a single handle control guides the PAC-MAN about the maze, scoring points by munching up the Dots in his path. Four Ghost Monsters—Inky, Blinky, Pinky and Clyde— chase after the PAC-MAN



Thus the name "PAC-MAN" describes a part of the game. To that extent the name is descriptive and a functioning part of the game and the burden of proving "secondary meaning" is on Midway. There is no credible evidence, no survey, no exclusive use by Midway for a long period of time, to show that the word has acquired "secondary meaning."

See In re Mogen David Wine Corp., 328 F.2d 925, 929 (C.C.P.A. 1964) and Jacobs v. Robitaille, 189 U.S.P.Q. 701 (D.C. D.N.H. 1976):

"It may be that a merchant or manufacturer can, over a long period of time, make such a distinctive and original arrangement of advertising features ...

In the instant case, plaintiff has failed to establish that his commercial design is indelibly imprinted on the public mind.

[emphasis added]

In Time Mechanisms, Inc. v. Quonaar Corp., 194 USPQ 500 (D.C.N.J. 1976) Judge Lacy stated the test in this way:

In order to determine whether a trademark has acquired a secondary meaning the following factors should be considered:

- (1) the length and manner of its use;
- (2) the nature and extent of advertising

and promotion of the mark and (3) the efforts made in the direction of promoting a conscious connection, in the public mind, between the name or mark and a particular product or venture.

[3 Callman, Unfair Competition Trademarks and Monopolies, 3rd ed. §773 at 349, emphasis added]

Further, Midway may not claim trademark rights in the functioning characters (PAC-MAN), the "attract mode," etc., or anything which serves a function in the game. See, for example, In re Honeywell, Inc., 532 F.2d 180, 189 USPQ 343 (CCPA 1976).

For is the word "PAC-MAN" or the character unique with Midway or its predecessor. [See the attached certified copies of Trademark Applications 313,744 and 313, 743, which include an affidavit by an officer of TOMY KOGYO CO., INC. swearing that it has exclusive rights to the character and name for "Apparatus, including a coin receptacle, for playing a manipulative game," stating a date of first use of June 1, 1976 and an in-foreign-commerce date in 1977, well before Midway's first use.]

These documents raise serious questions as to Midway's rights in the name PAC-MAN and more importantly establish that the term has a meaning well-established before any common law rights could possibly have been established by Midway. Under the Yo-Yo case, Donald F. Duncan v. Royal Tops Co., Inc., 343 F.2d 655, 144 USPQ 617 (7th Cir. 1965), this invalidates any claim of trademark by Midway.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

RECEIVED

AUG 27 1981

KINNEY AND NIBLACK
CHICAGO, ILLINOIS

IN THE MATTER OF

CERTAIN COIN-OPERATED,
AUDIOVISUAL GAMES AND
COMPONENTS THEREOF (VIZ
RALLY-X AND PAC-MAN)

Investigation No.
337-TA-105

ANSWERS TO INTERROGATORIES OF RESPONDENT
ARTIC INTERNATIONAL, INC. TO COMPLAINANT

Pursuant to § 210.32 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.32), Complainant, through counsel, answers the interrogatories of Artic International, Inc. as follows:

Interrogatory No. 1. With respect to the videotape submitted in obtaining the RALLY-X alleged copyright Registration No. PA-88-049, state the date, time, place, subject matter portrayed (e.g., S.N. _____ RALLY-X machine), person(s) playing the game and his and/or her employment, and identify the person or persons who recorded the tape and/or whose voices were recorded thereon.

Answer No. 1. The video tape was made at Midway Mfg. Co., 10601 W. Belmont Ave., Franklin Park, Illinois 60131. The person playing the RALLY-X video game and the voice on the tape was JoAnn Krall an employee of Bally-Midway at that time.

RALLY-X video games are available for inspection at the offices of Plaia & Schaumberg, Chartered, 1019 19th Street, N.W., Washington, D.C. 20036 upon request.

Interrogatory No. 13. What exactly does Complainant assert is the work of Copyright Registration No. PA-88-049.

Answer No. 13. Complainant objects to Interrogatory No. 13 as seeking legal arguments which will be the subject of Complainant's brief.

Interrogatory No. 14. What exactly does Complainant assert is the work of Copyright Registration No. PA-83-768.

Answer No. 14. Complainant objects to Interrogatory No. 14 as seeking legal arguments which will be the subject of Complainant's brief.

Interrogatory No. 15. State each and every way in which Midway obtained ownership or rights with respect to the alleged trademark PAC-MAN.

NOTE: → Answer No. 15. Midway has obtained its rights on the PAC-MAN trademark at common law.

Interrogatory No. 16. With respect to the first sale or publication of the alleged work of PA-88-049, state the text of, location, and when any copyright notice appeared.

Answer No. 16. Complainant objects to Interrogatory No. 16 as vague and indefinite insofar as it is unclear whether the information sought relates to publication or first sale in the U.S. or abroad.

CHECK REQUEST

REASONS	ACCOUNT	AMOUNT
SPIDER MAN MACHINES 1,900 EA (PUECKMAN)		\$ 1,900.00 X 10
		19,000.00
	4% TAX	760.00
	HOLD BACK	(2,500.00)
		17,260.00

INDUSTRIAL 10/20/80	PAY EXACTLY 4381 DATE 10/20/80	REQUEST BY
	DATE 10/20/80	APPROVED BY

Connel Exhibit 4
 WIT R. OGATA
 Linda J. Bogden, N.P. 8/5/81
 12 pgs

00003

6566

Suite 1152 American Security Bank Bldg.
1314 S. King St., Honolulu, Hawaii 96814
Tel: 524-8031 Telex: Kapin 7430585

Tel: 524-8031 Telex: Kaoin 7430585		SHIPPED TO	
OLD TO	E. K. Fernandez & Son	STREET & NO. Same	
STREET & NO.	40-246 O'hana St.	CITY	STATE ZIP
CITY	Hon. HI. 96706	F.O.B. DATE 1/1/82	

CUSTOMER'S ORDER	SALESMAN	TERMS	F.O.B.	DATE
	A	balance & 5 days		10/21/80
1c Packman Video Game Machine				1900 - 1900 -
			Tx 49	760 -
				<u>1130 -</u>
				2300 -
				<u>1770 -</u>
Paid check #4381 \$1770		45 by balance due		
PAID				

00005

2413

GAME Duckman SERIAL KP/201 MANUFACTURER _____
SUPPLIER Kao's FREIGHT BILL # 253980 METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/18/80 CARRIER Airport Courier
LOCATION TO BE INSTALLED Porter. Waikiki II
DATE OF INSTALLATION 10/29/80 # 1
Meter Reading 99824

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key #2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # M 9741
5. MANUALS SUPPLIED: A) Service - B) Parts - C) Monitor -
6. GAME POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: D. J. Ad

8. OPERATED AT LOCATION BY: Henry Babin

(1) Copy - Shop

(1) Copy - Accounting

(1) Copy - XSF

00005.

NAME P Buckner SERIAL # KD 1202 MANUFACTURER _____
SUPPLIER Kao's FREIGHT BILL # 253980 METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/18/80 CARRIER Airport Carrier _____
LOCATION TO BE INSTALLED Waikiki II _____
DATE OF INSTALLATION 10/20/80 _____
Meter Reading 99879 #2

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # 2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # Q 3579
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. GAGE POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: D. J. (C)
8. OPERATED AT LOCATION BY: George B. L.

(1) Copy - Shop

(1) Copy - Accounting

(1) Copy - ISF

00006

CASE Puckman SERIAL # KP 1203 MANUFACTURER _____
SUPPLIER Kao's FREIGHT BILL # 253980 METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/18/80 CARRIER Air Port Courier _____
LOCATION TO BE INSTALLED Waikiki II _____
DATE OF INSTALLATION 10/20/80 _____
Meter Reading 99824

3

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # F2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # Q3566
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. GAME POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: D. L. (signature)
8. OPERATED AT LOCATION BY: George Bolie

- (1) Copy - Shop - -
- (1) Copy - Accounting - -
- (1) Copy - KSF - -

NAME Puckman SERIAL # KD 1704 MANUFACTURER _____
SUPPLIER Kuc's FREIGHT BILL # 253980 METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/18/80 CARRIER Airport Carrier _____
LOCATION TO BE INSTALLED Waikiki II _____
DATE OF INSTALLATION 10/29/80 _____
Master Reading 79826

#4

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # F 2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # M 9737
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. GAGE POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: D J [Signature]

8. OPERATED AT LOCATION BY: George Barlow

(1) Copy - Shop -

(1) Copy - Accounting -

(1) Copy - ISF -

00008

NAME Puckman SERIAL # KD 1205 MANUFACTURER _____
SUPPLIER Kan's FREIGHT BILL # 253980 METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/18/80 CARRIER Airport Courier _____
LOCATION TO BE INSTALLED Kuhio _____
DATE OF INSTALLATION 10/20/80 _____
Meter Reading 99825 #1

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # F2003
2. BACK DOOR KEY NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # M9874
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. GAME POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: Colony P. Starnes

8. OPERATED AT LOCATION BY: George B. Bled

(1) Copy - Shop -

(1) Copy - Accounting -

(1) Copy - KSF -

00009

GATE Puckman SERIAL # KD 1206 MANUFACTURER _____
SUPPLIER Kac's FREIGHT BILL # 253980 METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/18/80 CARRIER Airport Courier _____
LOCATION TO BE INSTALLED Kuh. _____
DATE OF INSTALLATION 10/20/80 _____
Meter Reading 99829 # 2

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # F2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASE BOX LOCK INSTALLED NA Key # M9789
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. GATE POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: Colley W. Skimming
8. OPERATED AT LOCATION BY: Gene B. Lili

(1) Copy - Shop -

(1) Copy - Accounting -

(1) Copy - XSF -

00010

CAME Backman SERIAL # KD 1207 MANUFACTURER _____
SUPPLIER Kac's FREIGHT BILL # 253980 METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/18/80 CARRIER Airport Carrier
LOCATION TO BE INSTALLED Pearlridge
DATE OF INSTALLATION 10/20/80
Meter Reading, 99839 #4

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # F2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # M9762
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. CAME POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: W. Plister

8. OPERATED AT LOCATION BY: George B. Davis

(1) Copy - Shop -

(1) Copy - Accounting -

(1) Copy - KSF -

00011

GAME Arkman SERIAL # KD 1208 MANUFACTURER _____
SUPPLIER Kee's FREIGHT BILL # 253980 METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/18/80 CARRIER Airport Carrier _____
LOCATION TO BE INSTALLED Pearlridge _____
DATE OF INSTALLATION 10/20/80 _____
Meter Reading: 99820

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # F2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # M9776
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. GAME POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: M. Pistor

8. OPERATED AT LOCATION BY: George Berlin

(1) Copy - Shop -

(1) Copy - Accounting -

(1) Copy - KSF -

00012

NAME Buckman SERIAL # KD 1209 MANUFACTURER _____
SUPPLIER Kao's FREIGHT BILL # _____ METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/19/80 CARRIER Andy Kao
LOCATION TO BE INSTALLED Perbridge
DATE OF INSTALLATION 10/20/80
Meter Reading 99849 # 2

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # F2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # M9825
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. GATE POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: M. Plister
8. OPERATED AT LOCATION BY: Gez Barli

(1) Copy - Shop -

(1) Copy - Accounting -

(1) Copy - KSF -

00013

CAME Buckman SERIAL # KD 1210 MANUFACTURER _____
SUPPLIER Kuo's FREIGHT BILL # _____ METHOD: AIR/SURFACE _____
DATE OF RECEIPT 10/19/80 CARRIER Andy Kuo
LOCATION TO BE INSTALLED Pearlridge
DATE OF INSTALLATION 10/20/80
Meter Reading 99819 1

CHECKLIST

1. FRONT DOOR LOCK INSTALLED NA Key # F2003
2. BACK DOOR KEY # NA
3. BACK DOOR KEYS SECURED NA
4. CASH BOX LOCK INSTALLED NA Key # M9888
5. MANUALS SUPPLIED: A) Service — B) Parts — C) Monitor —
6. CAME POWERED UP AND OPERATED PER MANUAL Yes

DISCREPANCIES: _____

7. RECEIVED AT LOCATION BY: M. P. [Signature]

8. OPERATED AT LOCATION BY: [Signature]

(1) Copy - Shop -

(1) Copy - Accounting -

(1) Copy - KSF -

00014

1 UNITED STATES INTERNATIONAL TRADE COMMISSION

2 WASHINGTON, D. C.

3 In the Matter of) NO. 337-T-105
4)
5 Certain Coin-Operated)
6 Audiovisual Games and)
Components thereof)
(Viz Rally-X and Puck-Man))

7 DEPOSITION OF RANDALL K. OGATA

8 Deposition of Randall K. Ogata, taken pursuant to Notice at
9 10:20 a.m., Wednesday, August 5, 1981, at the offices of
10 Chee, Lee, Oshiro & Williams, 1100 Pacific Trade Center,
11 190 South King Street, Honolulu, Hawaii.

12 APPEARANCES:

13 For Complainant
14 MIDWAY MANUFACTURING
CO.:

HERBERT C. SHELLEY, ESQ.
Plaia & Schaumberg, Chartered
1019 Nineteenth Street, N.W.
Washington, D. C. 20036

15 For Respondent
16 FERNANDEZ FUN
17 FACTORY:

KENNETH R. KUPCHAK, ESQ.
Damon, Key, Char & Bocken
10th Floor, City Bank Building
810 Richards Street
Honolulu, Hawaii 96813

18 Representing
19 U. S. INTERNATIONAL
20 TRADE COMMISSION:

SAMUEL BAILEY, JR., ESQ.
U. S. International Trade
Commission
701 E Street, N.W.
Washington, D. C. 20436

21
22 Reported by:

23 LINDA J. BOGDEN, RPR
24 116 South King Street
Suite 403
25 Honolulu, Hawaii 96813

POWERS & ASSOCIATES
(808) 521-7815

1 A. It's an internal document that we use to document
2 the receipt of a particular machine.
3 Q. Could you give me the specific information on this.
4 Who the machine is received from, the date and the names of
5 the games, how many.
6 A. Right. We have one sheet for each game that's
7 received. And, as you see, it indicates the description of
8 the game, the serial number, the supplier, the freight bill,
9 if any, method of shipment, date received, who was the
10 freight forwarder or freight company, location intended for
11 this machine to be installed, date of installation, meter
12 reading at the date of installation, and various security
13 type of information, such as installing locks and things.
14 Q. On this particular invoice, what is the game involved?
15 A. I beg your pardon?
16 Q. What is the name of the game for this particular
17 invoice?
18 A. The name of the game is Puck-Man.
19 Q. Does it indicate from whom you received the game on
20 that?
21 A. Yes, it indicates the supplier as Kaoh's.
22 Q. What is Kaoh's?
23 A. K.K. Industrial Services.
24 Q. It's a different name for K.K. Industrial Services?
25 A. Yes.

1 Q. What's the date of receipt on the game?
2 A. October 18, 1980.
3 Q. And there's a date of installation. What is--
4 A. October 20, 1980.
5 Q. And where was that game installed?
6 A. In Waikiki.
7 Q. Waikiki, is that your--
8 A. Waikiki #2.
9 Q. What's that?
10 A. That's our Kuhio Mall location, second floor.
11 Q. Could you please describe the next document numbered
12 0006? You don't have to go through and name all the--if you
13 will just indicate it's the same document as the one just
14 described. Just give me the specific information: the name
15 of the game, when it was received, where it was located.
16 A. The name of the game is Puck-Man. It was received
17 October 18, 1980, installed in Waikiki #2.
18 Q. Who did you receive it from?
19 A. Received from Kaoh's.
20 Q. Would you look at the next document, numbered 0007,
21 tell me what that is?
22 A. It's another machine received from the same people,
23 same game, same dates.
24 Q. Next one, please, number eight?
25 A. Number eight is the same information for a different

1 machine from the same people.

2 Q. A different machine?

3 A. Same machine.

4 Q. Same machine?

5 Number nine.

6 A. Number nine is another machine of the same type
7 received from the same people.

8 Q. Same dates?

9 A. Same dates, except it's installed in our Kuhio Factory.

10 Q. Number 10?

11 A. Number 10 is the same game received from the same
12 people installed on the same dates at Kuhio Fun Factory.

13 Q. Number 11?

14 A. Same name, same supplier, same dates except that
15 it's installed at our Pearlridge location.

16 Q. Number 12?

17 A. Same name, same supplier, same dates, except it's
18 installed at Pearlridge.

19 Q. And number 13?

20 A. Number 13 was also installed at Pearlridge. Same
21 game, same supplier, same dates.

22 Q. And 14?

23 A. Excuse me. The dates on receipt of this 13 indicates
24 it was received on the 19th.

25 Q. Of October?

1 A. Of October.

2 Q. 1980?

3 A. And the same with number 14.

4 Q. These are all stapled together. Would these games
5 correspond to the ones that are listed in the invoice and
6 the check request, I think it's for ten games?

7 A. Right, that's correct.

8 (Whereupon Complainant's Exhibit 4 was marked for
9 identification.)

10 Q. (By Mr. Shelley) Would you look at this document
11 numbered 00015. It's very dark.

12 A. This is also a check request for the purchase of
13 four Puck-Man games from K.K. Industrial Services.

14 Q. What's the date, if you can see the date?

15 A. It looks like it's November 26, 1980.

16 Q. And would you look at document No. 16 which is
17 attached to that and describe that document.

18 A. Invoice from K.K. Industrial Services for four
19 Puck-Man games.

20 Q. What's the date on the invoice?

21 A. November 26, 1980.

22 MR. SHELLEY: Would you mark these, please?

23 (Whereupon Complainant's Exhibit 5 was marked for
24 identification.)

25 A. Number 17 is also a check request from--for K.K.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D. C.

In the Matter of

CERTAIN COIN-OPERATED
AUDIOVISUAL GAMES AND
COMPONENTS THEREOF (VIZ
RALLY-X AND PAG MAN)

Investigation No. 337-TA-105

AFFIDAVIT OF PAT STORINO

State of New Jersey

Borough of Point Pleasant Beach

ss:

PAT STORINO, being duly sworn, deposes and says:

1. I am President of Jay Amusement, Inc., a Delaware corporation d/b/a Jay Industries. Jay Industries manufactured and sold no more than 225 electronic video games called "GOBBLER" which are subject to this investigation.

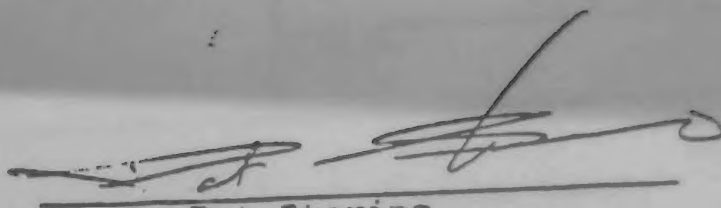
2. On or about October 8 through 10, 1980, I attended the Japanese Amusement Machinery Manufacturers' Association's trade exhibit in Tokyo, Japan. At this exhibit, I observed that at least ten distinct manufacturers were offering for sale the video game Puckman, or kits which enabled the purchaser to convert an existing video game to the Puckman game. None of the games or conversion kits I saw at this trade exhibit bore a copyright notice or any other claim of exclusive right.

3. Namco, Ltd., which Complainant alleges devised and created the PAC-MAN game under the name Puckman, also exhibited its Puckman game at this trade exhibit. Its game did not differ in any material respect from those of the other manufacturers. Namco did not appear to be asserting any exclusive or proprietary rights to Puckman at the trade exhibit.

4. Jay Industries has never sold a game entitled "Puckman" or "PAC-MAN." It has sold a game called GOBBLER. At the trade exhibit, it arranged to purchase printed circuit boards for GOBBLER, as well as power supplies and wiring harnesses, from a Japanese supplier.

5. Jay Industries began to assemble its GOBBLER game, using components imported from Japan, in late December 1980. The first sale occurred in early January 1981. Neither I nor anyone else associated with Jay Industries was aware that Midway claimed exclusive rights in Puckman until after assembly and sale had begun.

6. Jay Industries has already ceased the importation of component parts to its GOBBLER game, and neither imports nor intends to import any of the games or component parts at issue in this investigation. It has not manufactured or sold any GOBBLER since March 1981. It does not intend to manufacture or distribute any additional GOBBLER games.



Pat Storino

Subscribed and sworn to before
me this 17th day of July, 1981

Barbara L. Scharmann
Notary Public

My Commission expires:

BARBARA L. SCHARMANN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 3, 1985